

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60278

FILE: B-185257

DATE: December 9, 1975

MATTER OF: L&R Crane Hoist Corporation

97618

DIGEST:

Recission of contract for sale of surplus property is allowed where it is shown that contracting officer was on constructive notice of possibility of error and did not verify bid prior to award.

The Defense Supply Agency (DSA) has requested our approval of the proposed recission of sales contract No. 31-5420-180 with the L&R Crane Hoist Corporation (L&R) for a 1952 truck. The proposed recission was requested by L&R, since it allegedly intended to bid on item 32 (an electric hoist) rather than on item 36 (a 1952 truck) under invitation for bids 31-5420 issued by the Defense Property Disposal Service for the sale of surplus property.

The contract was awarded on June 20, 1975, without verification of the bid. By telephone conversation on June 23, 1975, with the contracting officer, L&R alleged that award of item 36 to it was in error. By letter of July 8, 1975, L&R stated that it did not have any use for the truck and that it always bid on items such as hoists or overhead electrical cranes only. Item 36 was described as follows in the solicitation:

"RESIDUE, TRUCK: 2-1/2 Ton, 1952 GMC model M135, serial 10137, 6x6, wheel size 20". Major parts attached: engine block, winch, cab, less cover, bed, 1 front axle, 2 rear axles, rear wheels and transmission. Parts detached but included: left front fender, 4 rims, 3 drums, 1 drive shaft. FSN 2320-835-8352. CP # 426.

"Outside OPENSTOGE - Used - Poor Condition
Repairs Required
Total Cost \$300
Est. Total Wt. 15,000 lbs. 1 EACH"

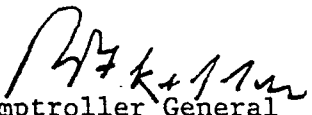
The record before this Office indicates that L&R's bid of \$1,505 for item 36 was 2.84 times greater than the second high bid (\$529), and 6.02 times greater than the current market appraisal established prior to bid opening (\$250). The bid was also 501.67 percent of acquisition cost for this item, which in this case reflects the estimated acquisition cost of the residue.

Rescission of the contract can only be allowed if the contracting officer had actual or constructive notice that L&R had made a mistake in its bid. Ordinarily a wide range of bid prices in surplus property sales is not deemed to be sufficient to put the contracting officer on constructive notice of the possibility of error because of the many possible uses to which the property may be put. Wender Presses Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965). However, see Chernick v. United States, 372 F.2d 492, 496 (Ct. Cl. 1967) in which the Court of Claims stated:

"* * * The test of what an official in charge of accepting bids 'should' have known must be that of reasonableness, i.e., whether under the facts and circumstances of the case there were any factors which reasonably should have raised the presumption of error in the mind of the contracting officer; among such factors are obvious wide range of bids, and gross disparity between the price bid and the value of the article which was the subject of the bid. * * *"

After reviewing the agency file and, on the basis of information contained therein, we agree that the contracting officer was on constructive notice of possible error in the bid of L&R and should have requested verification of the bid prior to award.

Accordingly, the sales contract may be rescinded, as administratively recommended, without liability to L&R Crane Hoist Corporation.


Deputy Comptroller General
of the United States